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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XT025

Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, and Shark Research Fishery Permits; Letters of Acknowledgment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; request for comments; public webinar.

SUMMARY: NMFS announces its intent to issue exempted fishing permits (EFPs), scientific research permits (SRPs), display permits, letters of acknowledgment (LOAs), and shark research fishery permits for Atlantic highly migratory species (HMS) in 2020. EFPs and related permits would authorize collection of a limited number of HMS, including tunas, swordfish, billfishes, and sharks, from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific research, data collection, the investigation of bycatch, and public display, among other things. LOAs acknowledge that scientific research activity aboard a scientific research vessel is being conducted. Generally, EFPs and related permits would be valid from the date of issuance through December 31, 2020, unless otherwise specified, subject to the terms and conditions of individual permits. This notice also schedules a public webinar/conference call for applicants, during which NMFS will provide a general overview of the EFP program and hold a question and answer session.

DATES: Written comments received in response to this notice will be considered by NMFS when issuing EFPs and related permits and must be received on or before [*insert date 30 days after date of publication in the **FEDERAL REGISTER***].

ADDRESSES: Comments may be submitted by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0132, click the “Comment Now” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Craig Cockrell, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, phone: (301) 427-8503.

SUPPLEMENTARY INFORMATION: Issuance of EFPs and related permits are necessary because HMS regulations (*e.g.*, regarding fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) may otherwise prohibit the collection of live animals and/or biological samples for data collection and public display purposes or may otherwise prohibit certain fishing activity that NMFS has an interest in permitting or acknowledging. Pursuant to 50 CFR parts 600 and 635, a NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would

otherwise be prohibited. These permits exempt permit holders from the specific portions of the regulations that may otherwise prohibit the collection of HMS for public education, public display, or scientific research. Permit holders are not exempted from the regulations in their entirety. Collection of HMS under EFPs, SRPs, display, and shark research fishery permits represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the quota of the species harvested, as appropriate and applicable. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and/or species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

EFPs and related permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 635.32 govern scientific research activity, exempted fishing, and exempted public display and educational activities with respect to Atlantic HMS. Because the Magnuson-Stevens Act states that scientific research activity which is conducted on a scientific research vessel is not fishing, NMFS issues LOAs and not EFPs for bona fide research activities (*e.g.*, scientific research being conducted from a research vessel and not a commercial or recreational fishing vessel) involving species that are only regulated under the Magnuson-Stevens Act (*e.g.*, most species of sharks) and not under ATCA. NMFS generally does not consider recreational or commercial vessels to be bona fide research vessels. However, if the vessels have been contracted only to conduct research and not participate in any commercial or recreational fishing activities

during that research, NMFS may consider those vessels as bona fide research platforms while conducting the specified research. For example, in the past, NMFS has determined that commercial pelagic longline vessels assisting with population surveys for sharks may be considered “bona fide research vessels” while engaged only in the specified research. For such activities, NMFS reviews scientific research plans and may issue an LOA acknowledging that the proposed activity is scientific research under the Magnuson-Stevens Act. Examples of research acknowledged by LOAs include tagging and releasing sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark species, and collecting and sampling sharks caught during trawl surveys for life history and bycatch studies.

While scientific research is not defined as "fishing" subject to the MSA, scientific research is not exempt from regulation under ATCA. Therefore, NMFS issues SRPs that authorize researchers to collect HMS from bona fide research vessels for collection of species managed under this statute (*e.g.*, tunas, swordfish, and billfish)). One example of research conducted under SRPs consists of scientific surveys of tunas, swordfish, and billfish conducted from NOAA research vessels.

EFPs are issued for activities conducted from commercial or recreational fishing vessels. Examples of activities conducted under EFPs include collection of young-of-year bluefin tuna for genetic research; conducting billfish larval tows from private vessels to determine billfish habitat use, life history, and population structure, and tagging sharks caught on commercial or recreational fishing gear to determine post-release mortality rates.

NMFS is also seeking public comment on its intent to issue display permits for the collection of sharks and other HMS for public display in 2020. Collection of sharks and other HMS sought for public display in aquaria often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species (*e.g.*, sand tiger sharks), and collection of fish below the regulatory minimum size. Under Amendment 2 to the 2006 Consolidated Atlantic HMS Fishery Management Plan, NMFS determined that dusky sharks cannot be collected for public display.

The majority of EFPs and related permits described in this annual notice relate to scientific sampling and tagging of Atlantic HMS within existing quotas and the impacts of the activities to be conducted usually have been previously analyzed in various environmental assessments and environmental impact statements for Atlantic HMS management. In most such cases, NMFS intends to issue these permits without additional opportunity for public comment beyond what is provided in this notice. Occasionally, NMFS receives applications for research activities that were not anticipated, or for research that is outside the scope of general scientific sampling and tagging of Atlantic HMS, or rarely, for research that is particularly controversial. Should NMFS receive such applications, NMFS will provide additional opportunity for public comment, consistent with the regulations at 50 CFR 600.745.

On September 13, 2018, NMFS received an application for an EFP requesting an exemption from the regulations that prohibit the retention of bluefin tuna with unauthorized gear onboard. See 50 CFR 635.19(b). This application was submitted by the Cape Cod Commercial Fishermen's Alliance (CCCFA). The applicants suggested that with the use of electronic monitoring (EM) and through issuance of an EFP, there

would be sufficient at-sea monitoring to verify the catch of bluefin tuna occurred with authorized gear (*e.g.*, rod and reel and harpoon gear) and not on the unauthorized gear onboard the vessel (*e.g.*, benthic longline, jigging machines, handgear, demersal gillnet, or otter trawl). An EFP was issued to the CCCFA on June 12, 2019 that exempted eight vessels from 50 CFR 635.19(b). Since issuance of the permit, 13 trips have been taken from May through September in New England, four bluefin tuna were retained, and one tuna was lost at the boat. On two of the 13 trips, harpoon gear was used, but no fish were harvested. There were a total of two sharks caught on rod and reel gear both of which were released alive. Comments are invited specifically on these issues related to issuance of a similar permit to the CCCFA this year.

In addition, Amendment 2 to the 2006 Consolidated HMS Fishery Management Plan (FMP) implemented a shark research fishery. This research fishery is conducted under the auspices of the exempted fishing permit program. Shark research fishery permit holders assist NMFS in collecting valuable shark life history and other scientific data required in shark stock assessments. Since the shark research fishery was established in 2008, the research fishery has allowed for: the collection of fishery dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help reduce fishery interactions through bycatch mitigation; the evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks; the collection of hook-timer and pop-up satellite archival tag information to determine at-vessel and post-release mortality of dusky

sharks; and the collection of sharks to update the weight conversion factor from dressed weight to whole weight. Fishermen who wish to participate must fill out an application for a shark research fishery permit under the exempted fishing program. Shark research fishery participants are subject to 100-percent observer coverage. All non-prohibited shark species brought back to the vessel dead must be retained and will count against the appropriate quotas of the shark research fishery participant. In recent years, all participants of the shark research fishery were limited to a very small number of dusky shark mortalities on a regional basis. Once the designated number of dusky shark mortalities occurs in a specific region certain terms and conditions are applied (*e.g.* soak time limits). If subsequent interactions occur in the region all shark research fishery activities must stop within that region. Participants would continue to be limited in the number of sets allowed on each trip and the number of hooks allowed on each set. All participants are also limited to a maximum of 500 hooks onboard the vessel while on a shark research fishery trip. A **Federal Register** notice describing the specific objectives for the shark research fishery in 2020 and requesting applications from interested and eligible shark fishermen is expected to publish in the near future. NMFS requests public comment regarding NMFS' intent to issue shark research fishery permits in 2020 during the comment period of this notice.

The number of specimens that have been authorized thus far under EFPs and other related permits for 2019, as well as the number of specimens collected in 2018, is summarized in Table 1. The total amount of collections in 2018 were within the analyzed quotas for all quota managed Atlantic HMS species. The number of specimens collected

in 2019 will be available when all 2019 interim and annual reports are submitted to NMFS.

In all cases, mortalities associated with EFPs, SRPs, or display permits (except for larvae) are counted against the appropriate quota. NMFS issued a total of 39 EFPs, SRPs, display permits, and LOAs in 2018 for the collection of HMS and 6 shark research fishery permits. As of October 28, 2019, NMFS has issued a total of 40 EFPs, SRPs, display permits, and LOAs and 5 shark research fishery permits.

Table 1 -- Summary of HMS Exempted Fishing Permits Issued in 2018 and 2019, Other than Shark Research Fishery Permits

Permit Type	2018			2019	
	Permits Issued**	Authorized Fish (Num)**	Fish Kept/Discarded Dead (Num)	Permits Issued**	Authorized Fish (Num)**
EFP					
HMS	2	162	6	7	120
Shark	4	0	3	4	20
Tuna	2	750	2	2	750
SRP					
HMS	6	2,030	1	4	549
Shark	1	487	653	1	486
Tuna	1	0	0	0	0
Display					
HMS	2	84	1	2	82
Shark	6	185	50	5	193
Total	24	3,698	716	25	3,698
LOA*					
Shark	15	185	1,109	15	0

*LOAs acknowledge scientific research activity but do not authorize activity. Thus, the number of sharks in the authorized fish column are estimates of harvest under LOAs. Permittees are encouraged to report all fishing activities in a timely manner.

** Some shark EFPs, SRPs, and LOAs were issued for the purposes of tagging and the opportunistic sampling of sharks and were not expected to result in large amounts of mortality, thus no limits on sampling were set. Given this, some mortality may occur throughout 2019 and will be accounted for under the 60 metric ton shark research and display quota.

Note: "HMS" refers to multiple species being collected under a given permit type.

Final decisions on the issuance of any EFPs, SRPs, display permits, and shark research fishery permits will depend on the submission of all required information about

the proposed activities, NMFS' review of public comments received on this notice, an applicant's reporting history on past permits, if vessels or applicants were issued any prior violations of marine resource laws administered by NOAA, consistency with relevant NEPA documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs, consistent with the assessment of such activities within the environmental impacts analyses in existing HMS actions, including the 1999 FMP, the 2006 Consolidated HMS FMP and its amendments, the Environmental Assessment for the 2012 Swordfish Specifications, and the Environmental Assessment for the 2015 Final Bluefin Tuna Quota and Atlantic Tuna Fisheries Management Measures.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: November 18, 2019.

Jennifer M. Wallace,
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National Marine Fisheries Service.

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